

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DEBBY BARRETT**, on February 24, 2003
at 7 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Debby Barrett, Chairman (R)
Rep. Dee Brown, Vice Chairman (R)
Rep. Norman Ballantyne (D)
Rep. Arlene Becker (D)
Rep. Sue Dickenson (D)
Rep. Carol Gibson (D)
Rep. Daniel S. Hurwitz (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)
Rep. Don Roberts (R)
Rep. Clarice Schrumpf (R)
Rep. Frank Smith (D)
Rep. Pat Wagman (R)

Members Excused: Rep. Cindy Younkin (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Joan Reiman, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 651, HB 645, HB 662, HB
707, HB 719, HJR 28, 2/21/03
Executive Action: HB 523 & HB 475 DO PASS AS
AMENDED.

EXECUTIVE ACTION ON HB 523

Motion/Vote: REP. ROBERTS moved HB 523 BE RECONSIDERED.

On a voice vote, motion carried 18-1 with REP. B. OLSON voting no and REP. YOUNKIN voting by proxy. Voice vote was cast by acting MINORITY VICE CHAIR JACOBSON for REPS. JENT and WINDY BOY.

Motion: REP. ROBERTS moved HB 523 DO PASS.

Ms. Heffelfinger passed out the "grey bill", incorporating previously-made amendments.

EXHIBIT (sth41a01)

Discussion:

REP. ROBERTS stated that he had re-thought his objections, and that legal action is standard for infringements. REP. HURWITZ said he didn't like the bill, but it could go to the House Floor. REPS. LEHMAN and LENHART agreed. REP. B. OLSON called it "intrusive, with more restrictions." REP. BECKER noted the amendment didn't include "hand-delivered" materials. Ms. Heffelfinger said she will fix that on the final draft. CHAIRMAN BARRETT interpreted this amendment as saying that if a candidate intended to run an advertisement (ad) 48 hours before an election, they would have had to notify others mentioned in the ad by the 10-day deadline. Other members did not read the amended bill that way. The sponsor, REP. BALLYEAT, was called. He said he is open to amending wording to say "except for endorsement ads."

Motion: REP. BROWN moved HB 523 CONCEPTUAL AMENDMENT TO EXEMPT ENDORSEMENTS FROM THE COVERED CAMPAIGN ADS.

Discussion:

REP. SMITH asked REP. BROWN if this would cover the incident regarding statements about her voting record, and it did.

Vote: On a voice vote, motion carried 19-0.

Motion/Vote: REP. BROWN moved HB 523 DO PASS AS AMENDED. Motion carried 17-2 with REPS. JENT and B. OLSON voting no and REP. YOUNKIN voting by proxy. Voice vote was cast by acting MINORITY VICE CHAIR JACOBSON for REPS. JENT and WINDY BOY.

EXECUTIVE ACTION ON HB 475

Motion: REP. A OLSON moved HB 475 DO PASS.

Discussion:

Ms. Heffelfinger said the "grey bill" incorporated amendment 047501.alm.

EXHIBIT(sth41a02)

EXHIBIT(sth41a03)

REP. BROWN asked if the amendment addressed long-term consequences. **REP. A. OLSON** said the amendment deleted all references to Department of Natural Resources and Conservation (DNRC). **Ms. Heffelfinger** explained that it still requires local consent for Department of Fish, Wildlife and Parks (FWP) actions, and gives local government a 15-day option to appeal it to the county or a board. **REP. BECKER** asked if local landowners or water users have rights in this matter. **CHAIRMAN BARRETT** said the title, "Create the Montana Local Government Consent Act," mean that FWP will not have to deal with landowners. **REP. A. OLSON** said this does not apply to private land; all government permitting processes still work involving stream bank protection, conservation district, Army Corps and Department of Environmental Quality (DEQ). **CHAIRMAN BARRETT** said it removes references to all other departments but FWP. They will notify counties of pending actions; if no property owner objects, they proceed; but if there are objections, there would be a hearing. **REP. BROWN** said it puts much back onto conservation districts, which are voluntary boards; but she is for getting it out of committee.

Vote: On a voice vote, motion carried 19-0.

Motion: REP. A. OLSON moved HB 475 DO PASS AS AMENDED. On a voice vote, motion carried 17-2. Voting no were REPS. JENT and DICKENSON. Voting by proxy was REP. YOUNKIN. Voice vote was cast by acting MINORITY VICE CHAIR JACOBSON for REPS. JENT and WINDY BOY.

{Tape: 1; Side: A; Approx. Time Counter: 20 - 40}

Discussion: **CHAIRMAN BARRETT** asked for HB 518 fiscal note. She will sign the committee report now that the fiscal note was made available. **REP. LEHMAN** asked the effective date. She replied that because of the fiscal year, it becomes effective July 1, 2003.

REP. BECKER asked what became of HB 111 and was told it became HR 26.

HEARING ON HB 662

Sponsor: REP. DEE BROWN, HD 83

Opening Statement by Sponsor:

REP. BROWN said this bill provides a one-time permanent minimum benefit to Teachers' Retirement System (TRS) members who retired with less than 25 years of service.

{Tape: 1; Side: A; Approx. Time Counter: 42.1 - 49.8}

Proponents' Testimony:

David Senn, TRS Executive Director, said some of the teachers are disabled and many are women. It will cost \$1 million per year.

Diane Huber, Montana Retirement Education Association President, said the minimum benefit would be \$600/mo. It increases employer contributions and local county levies would rise.

{Tape: 1; Side: A; Approx. Time Counter: 45.1 - 49.8}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LEHMAN asked what the overall cost to counties would be.

Mr. Senn replied it would be \$600,000/yr. Some counties have surpluses in their retirement funds. **REP. WAGMAN** asked what the employee contribution rates would be. **Mr. Senn** replied that they have increased from 5% to 7.15 %. Most schools are enrolled with social security; a few are not. Employers' contributions in the past were also less. **REP. DICKENSON** asked where the money would come from. **REP. BROWN** replied that it could come from the Coal Trust. **REP. HURWITZ** asked for the breakdown of recipients. **Mr. Senn** estimated 103 are getting survivor benefits, 43 are on disability, 507 are on early retirement, and 722 are regular retirees. The bill will not apply retroactively to past employees. **REP. LEHMAN** asked for the age ranges. **Mr. Senn** said most are older women who left to raise families with an average age of 65. **REP. BECKER** asked if \$600 is the cap. **Mr. Senn** said the cap is 24 times the number of years, or \$480 at present.

{Tape: 1; Side: A; Approx. Time Counter: 49.8 - 61.3}

Closing by Sponsor:

The **Sponsor** closed.

HEARING ON HB 645

Sponsor: REP. DICK HAINES, HD 63

Opening Statement by Sponsor:

REP. HAINES said the two sections of the bill are identical, except one deals with municipalities, and one with counties. This bill prevents arbitrarily rejecting a contractor's bid; they must explain why it was rejected. It mirrors state and federal practices now. Contractors could appeal; grounds for rejecting a bid include that the city/county is unable to pay the amount of the bid.

{Tape: 1; Side: B; Approx. Time Counter: 3.5 - 7.5}

Proponents' Testimony:

Mike Kakuk, Attorney for Montana Contractors' Association, said contractors cannot get damages awarded unless they show fraud. This sets a minimum due-process, and would overrule the Supreme Court Debcon decision. If there are problems with the bill, they can amend it.

Robert Becky, Roebeck Construction, said he had this problem in Hamilton with a bid.

Cary Hegreberg, Executive Director, Montana Contractors Association, said this gives local contractors a chance to challenge low bids. He provided Exhibit 4.

EXHIBIT(sth41a04)

Carl Schweitzer, Subcontractors' Association, also testified in favor of the bill.

{Tape: 1; Side: B; Approx. Time Counter: 7.7 - 18.2}

Opponents' Testimony:

J. D. Lynch, Representing Butte/Silver Bow, called this "Big Brother" government.

Alec Hanson, League of Cities and Towns, testified against the bill.

Gordon Morris, Director of Montana Association of Counties (MACo), said the county commissioners would all agree that this would have a fiscal impact.

Bob Gilbert, Representing Rosebud County and the City of Colstrip, stated this is a state solution to local problems.

Tim Burton, Helena City Manager, said they rarely refuse the low bid, and that the commission makes the decision with the media present.

Charles Brooks, Representing Billings and Yellowstone County Commissioners, testified against the bill.

Joe Mazurek, Representing the City of Great Falls, said the new language sets a host of criteria, defines "responsible bidder," and is subjective.

Eric Griffin, Director of Public Works, Lewis and Clark County, President of Montana Association of County Road Supervisors, was against the bill.

Harold Blattie, Former Stillwater County Commissioner, said the bill covers equipment purchasing; even if the city were unable to pay, they would be contractually obligated.

Willy Duffield, Montana Association of Gas and Coal Counties, called this "a lawyer's dream come true."

{Tape: 1; Side: B; Approx. Time Counter: 18.2 - 31.6}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. BALLANTYNE asked why Mr. Becky did not get the bid. **Mr. Becky** replied he had heard it was because he was too young. **REP. BALLANTYNE** asked if he took the problem to the ACLU or Unfair Labor Practices. **REP. JACOBSON** asked if his bid had bonds. **Mr. Becky** replied the bid bond does not require a payment and performance bond, but he submitted a letter from the bond company anyway. **REP. JACOBSON** asked if there were other similar problems. **Mr. Hegreberg** replied that he could not mention the names.

REP. ROBERTS asked if they could ask contractors for particulars on a bid. **Mr. Morris** said they could ask by telephone. **REP. ROBERTS** asked if an out-of-town contractor was at a disadvantage. **Mr. Morris** said that is not a widespread problem.

REP. SMITH asked how Mr. Becky was notified. He replied it was by a phone message whereas it is required to be written. **REP. WAGMAN** asked about exclusions. **Mr. Griffin** said they do that for emergencies, like bridge problems. **REP. DICKENSON** asked for some reasons why the lowest bid may not be accepted. **Mr. Burton** replied that the low bid may not fit the design, as with the new eastside water tank; the city gives a 3% local preference.

REP. WINDY BOY asked if the aggrieved contractor could go to court. **Mr. Mazurek** replied a lot of new specifications in the bill are confusing. **REP. BECKER** asked if it would overrule the Supreme Court decision. **Mr. Kakuk** replied that it would. That decision provides no damages, only injunctions, and the plaintiff must be a local taxpayer.

{Tape: 1; Side: B; Approx. Time Counter: 33 - 47}

Closing by Sponsor:

REP. HAINES said the low bid must include a statement of the long-term life of equipment. Court action resulting from this bill would be limited, he said, and precedents exist. He submitted amendments.

EXHIBIT (sth41a05)

{Tape: 1; Side: B; Approx. Time Counter: 47 - 50}

HEARING ON HB 651

Sponsor: **REP. CHRIS HARRIS, HD 30, Bozeman**

Opening Statement by Sponsor:

REP. HARRIS said Montana's primaries now have no influence on selecting a presidential candidate or on issues. This sets the primary date in February or March. Candidates will also come here and spend money.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.1}

Proponents' Testimony:

SEN. MIKE COONEY, SD 26, said he supports this bill. Talk of setting up a western regional presidential primary hasn't worked.

Doug Mitchell also testified in favor of the bill.

{Tape: 2; Side: A; Approx. Time Counter: 4.1 - 5.6}

Opponents' Testimony: None

Informational Testimony:

Gordon Morris, Executive Director, MACo, said he liked the economic development aspect, but there will be fiscal implications of holding special elections in February.

Robert Throssell, MACR, was there to answer questions.

Elaine Gravely, Elections Deputy, Secretary of State, was there to answer questions.

Questions from Committee Members and Responses:

REP. ROBERTS asked if this is the seed for western states to have their own regional primary. **REP. HARRIS** replied that this would allow that. **REP. B. OLSON** asked if Montana is sixth in line. The **Sponsor** named six states with earlier primaries. New Hampshire's primary is set one week before anyone else's, so Montana cannot go first. **REP. BALLANTYNE** said we only get three electoral votes. The **Sponsor** replied those three are in November; this is for the primary. If the field is crowded, candidates are all desperate and would come here.

REP. DICKENSON asked if this would affect other races and was told it would not affect other races, only presidential. She expressed fiscal concerns. The **Sponsor** said he is open to opinions and admitted this may be too hard to do. **REP. BROWN** said a special election would cost half a million dollars. **REP. HARRIS** said he wants the concept to be accepted first. If Montana is early in the season, it will bring money here. **REP. HURWITZ** asked what problems might be encountered. **Ms. Gravely** replied that this would work. The only problem she named was that if folks are gone, filing during the holidays might be hard. **REP. B. OLSON** asked if there is a filing fee for president in Montana. **Ms. Gravely** said Montana has no filing fee, and she agreed to research if other states charged.

Closing by Sponsor:

The Sponsor closed.

HEARING ON HB 707

Sponsor: **REP. JILL COHENOUR, HD 51**

Opening Statement by Sponsor:

REP. COHENOUR said state employees who experienced reduction in force (RIF) or are voluntarily terminated will get early retirement, health insurance, and sick leave with this bill.

Proponents' Testimony:

Tom Schneider, Executive Director, Montana Public Employees Association, MPEA, said Eastmont Human Services Center will be closed this session, laying off 94 employees; some never had another job. This bill would cash out sick leave at 100% if put into a medical savings account, which they will need. Once the closure notice goes out, employees will leave for other jobs. This may allow the facility to keep functioning minimally.

Todd Lovshin MEA/MFT, said no other bill provides benefits for RIF-ed people. Department of Health and Human Services (DPHHS) has already RIF-ed employees. Those positions would be filled at lower grade levels.

Mark Taylor, Association of Montana Highway Patrolmen, also testified in favor of this bill.

Opponents' Testimony: None

Informational Testimony:

Mike O'Connor, Executive Director, PERS, said PERS tried to quantify the situation by considering employees who either have 30 years or are age 50 with 5 years of service. There are 3,500 potential eligibles; of these, PERS expects 31% to apply. The last incentive 10 years ago had 27% of eligibles cashing out. Total cost would be \$22 million for the incentive; a provision in statute would let agencies pay it off over time. The University System was not included, but it may have 1,000 eligibles.

{Tape: 2; Side: A; Approx. Time Counter: 32 - 39}

David Senn, Executive Director, TRS, was there to answer questions.

John McEwen, State Personnel Division Administrator, was there to answer questions.

Questions from Committee Members and Responses:

REP. LEHMAN asked where the fiscal note was. The **Sponsor** said that it was still in the Budget Office. There will be two years of biggest cost, then two sections spread out over time. **REP. B. OLSON** asked **Mr. McEwen** to compare this bill with HB 360, another buyout bill. He replied that this is similar, but HB 360 gives a termination incentive of 3% and applies to anyone, versus HB 707 only applies to retirement-eligibles.

{Tape: 2; Side: A; Approx. Time Counter: 40 - 42.3}

Closing by Sponsor:

REP. COHENOUR said with HB 360, employees have to agree not to come back more than half time. HB 707 gives benefits to other than retirement-eligibles, such as RIF-ed employees.

HEARING ON HB 719

Sponsor: **REP. ALAN OLSON, HD 8**

Opening Statement by Sponsor:

REP. OLSON said initiative reform was popular; CA 37 and 38 passed overwhelmingly.

{Tape: 2; Side: A; Approx. Time Counter: 46 - 47}

Proponents' Testimony:

Elaine Gravely, Deputy Elections Administrator, said her handout compared short time frames for rebuttals. This bill requires that fiscal notes come from the LFA, not the Governor's Budget office. If the opponent disagrees with the proponent's rebuttal, that must also be on the ballot.

EXHIBIT (sth41a06)

Opponents' Testimony:

Mark Mackin, Helena, said that moving the filing date into May prevents getting signatures at primary elections and a statement of purpose or preamble is not allowed with the title. Montana does not need this bill because the Attorney General (AG) reviews for legal deficiency, while Legislative Services reviews ballot issues for conformance to Code. The legislature would intrude more into the process with this, he testified.

Patrick Judge, Montana Environmental Information Center (MEIC), said the process advocated is burdensome and intimidating. It accelerates the time in which to get signatures. It gives the

Secretary of State more time, but not citizens. Citizens prefer the AG's abbreviated titles for bills. The concern about signature gatherers working for hire was thrown out in Colorado.

Werner Bertelson also spoke against the bill.

{Tape: 2; Side: A; Approx. Time Counter: 49 - 66}

Informational Testimony:

Ronda Carpenter, Carpenter Consulting, said that the AG would still check the forms, but the time was lengthened, not shortened. Opponents don't know until the end of June that an initiative is against them.

Mark Taylor related an incident and proposed no signature gathering within 300-400 yards of the polls.

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. OLSON said that the bill would allow voters to become informed before signing petitions. Voters have the right to know if someone gathering signatures is paid.

HEARING ON HJR 28

Sponsor: REP. MIKE LANGE, HD 19

Opening Statement by Sponsor:

REP. LANGE was represented by REP. YOUNKIN, who said the bill encourages Department of Administration to initiate a collaborative study about public works construction contracts.

{Tape: 2; Side: B; Approx. Time Counter: 14 - 14.6}

Proponents' Testimony:

Cary Hegreberg, Lobbyist, said another bill by REP. LANGE was tabled that would address best value on construction contracts. His concern is subjectivity and a broader approach. He offered amendments.

Opponents' Testimony:

Gordon Morris, Executive Director, Montana Association of Counties (MACo), said that local government is swept into this

bill and Department of Administration has no business in the county government bid process.

Informational Testimony:

Russ Katherman, Construction Administrator, Architectural and Engineering Division, said local people coming for a study would have to cover their own costs.

Questions from Committee Members and Responses:

REP. JACOBSON asked for a definition of "best value." **Mr. Katherman** replied that it is a difficult, broad question. Their intent was to come up with a process. **REP. BROWN** asked if MACo would be a proponent without the amendments. **Mr. Morris** replied that was correct. **REP. B. OLSON** asked about the fiscal note. He admitted that the bill was vague. **REP. GIBSON** asked if the goal for the study was being set before doing the study. **Mr. Hegreberg** replied that numerous design/build processes besides low bid influence decisions. No framework exists in law for state and local government-awarded contracts. He wants to get relevant parties together to decide the best way.
{Tape: 2; Side: B; Approx. Time Counter: 21.6 - 27}

Closing by Sponsor:

The Sponsor closed.

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. DEBBY BARRETT, Chairman

JOAN REIMAN, Secretary

DB/JR

EXHIBIT (sth41aad)